

**MINUTES OF THE MEETING OF THE ZONING BOARD OF APPEALS,
TUESDAY, JANUARY 21, 2014
6:30 P.M., IN COUNCIL CHAMBERS, CITY HALL,
MIDLAND, MICHIGAN**

1. ROLL CALL

PRESENT: **Board Members** – Green, Higgins, Lichtenwald, Siemer and Steele

ABSENT: **Board Member** – None

OTHERS PRESENT: Brad Kaye, Director of Planning and Community Development, Grant Murschel, Community Development Planner and two (2) others.

2. APPROVAL OF MINUTES

It was moved by Siemer and supported by Higgins to approve the minutes of the October 15, 2014. The motion was approved unanimously.

3. PUBLIC HEARINGS

The Chairman explained the public hearing procedures and how the Board decides if the variance request is approved, based on the five Board of Appeals decision criteria in the Zoning Ordinance. The variance is legally recorded with the property and is not transferrable to another parcel.

- a. No. 13-13 – Eastlawn Center LC** for a dimensional variance to the maximum wall sign standards that apply under the City of Midland Zoning Ordinance to Eastlawn Plaza. The property is located at 825 S. Saginaw Road and is zoned Regional Commercial (RC). The application is requesting a variance to permit 2.5 square feet of wall signage for every lineal foot of store frontage in the two mixed-use buildings located on the site. Current standards of the Zoning Ordinance permit a maximum of 300 square feet of wall signage per building based upon the building configurations and property frontage.

Background:

Brad Kaye presented the petition by explaining the location, current zoning of Regional Commercial and nature of the petition. He noted that the proposed variance would not apply to the single-tenant buildings on the site, addresses 803 Saginaw Road and 931 Saginaw Road. He explained the current signs that exist on site and how their current sizes relate to what is proposed.

Michael Damman, of Eastlawn Center LC, (1180 East Big Beaver, Troy, Michigan) and George Hartman, of Hartman Architects, P.C. (6905 Telegraph Road, Bloomfield Hills, Michigan), presented for the application. Damman explained that his site presents a unique situation given the varied frontages on multiple streets. This proposal is an attempt by his business to make the center viable to potential tenants. He added that they are hoping to entice travelers along the abutting roadways with signage that will attract potential customers to the stores within the center.

Higgins explained that he understands the need for the request but wondered why the request is for 250% more than what is currently allowed. He asked the petitioners why they should be granted the variance given that other areas of the city must comply with the ordinance requirements. Damman answered that the site has a lot of frontage that presents a unique situation. His request is to allow for adequate signage for each tenant to advertise their business.

Higgins wondered why the center has not allocated each unit a certain percentage of the total of what is allowed under signage standards. Hartman explained that if existing businesses, some of which have been in the center for years, were given a certain percentage, it would prohibit new tenants from obtaining signage if the ordinance standards reduced the allowable amount.

Higgins wondered if the Dairy Queen sign is adequate, in the opinion of the applicant. Damman explained

that the Dairy Queen sign may not need to be more than what it is, but changing Dairy Queen's sign is not what they're trying to accomplish with this application. He explained that they are trying to create a viable development. He does not believe that Dairy Queen does not need a larger sign but that there are other instances on site that could benefit from the proposed variance.

Higgins explained that the Zoning Board of Appeals has been directed to review proposals that look for necessary relief under the existing zoning ordinance. Higgins wondered if the applicant has requested for the Planning Commission to change the Zoning Ordinance. Damman answered that they have not because the variance option was a better time frame than an ordinance change. He further explained that when the second building was built, the ordinance allowed larger signs.

Damman confirmed that there are currently three vacant spaces in the center. He also added that current free standing signs have been maximized and do not allow for additional signage.

Green wondered about the future of the unit that Subway currently occupies. He wondered if current tenants have complained about the current signage.

(1) Will strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters unreasonably prevent the owner from using the property for a permitted purpose or render conformity unnecessarily burdensome?

Petitioner: Hartman explained that the uniqueness of the property does not allow the one-size-fits-all application of the ordinance. It is difficult to apply the 300 ft² to the entire site and attract new tenants.

Staff: The property is developed as a mixed use commercial plaza. The owner advises that attracting tenants is made more difficult by existing sign standards and administration of the allowable signage per tenant is also difficult given the per building application of sign standards.

(2) The variance will do substantial justice to the applicant as well as to other property owners.

Petitioner: Hartman explained that the variance will allow specific details to be given to tenants.

Staff: The applicant's intent is to ease the administration and application of current sign standards as they apply to this parcel/development. As proposed, it will also allow most signs on the existing storefronts to increase in area by approximately 250%. Approval would distinguish this property from any other commercial property in the City of Midland occupied by a mixed use commercial building having individual storefront entrances.

(3) The variance requested is the minimum variance to provide substantial relief to the applicant and/or be consistent with justice to other property owners.

Petitioner: Uniqueness of the site makes it difficult for Damman to attract tenants. The variance would allow new tenants to have adequate signage.

Staff: The application requests that allowable sign area be determined by the tenant lease building frontage. The proposed variance would allow substantially more signage than what is currently permitted.

(4) The need for the variance is due to the unique characteristics of the property not generally applicable in the area or to other properties in the same zoning district.

Petitioner: The plaza was built in the 1950s and has served the community. The uniqueness of the property presents it difficult to see the signs with the strange angles. Damman explained that the food

court is tough to sell to new tenants because of the uniqueness.

Staff: The plaza is situated with multiple road frontages and is somewhat irregularly shaped. Other commercial properties throughout the city do exist with multiple frontages and irregular shapes. Although not common, these conditions are not unique to only this property.

(5) The problem and resulting need for the variance has been created by strict compliance with the Zoning Ordinance and not the applicant.

Petitioner: All buildings onsite conformed to the ordinances that were in place at the time of construction.

Staff: Eastlawn Plaza was built under earlier zoning ordinance standards that were more permissive than are current sign standards. The current standards are applied collectively for the entire building, requiring ongoing updating of existing and new signs on the building. The proposed standard would simplify administration and application of the sign standards for both the applicant and city staff.

Siemer explained the conundrum of equity and how granting the variance would be inequitable to similar property owners within the city. Steele explained that the site has “sign pigs” that are using up more than their share of allowable signage. He also explained that he is uneasy with a 2.5 expansion; to him it seems to be too much of an additional allowance.

Higgins suggested that the Board consider the idea of allowing a smaller amount of additional signage, less than 2.5, to the property. Damman agreed that he would be agreeable to reconsider the proposal of 2.5.

Lichtenwald wondered about the zoning of the property where the freestanding Subway will be located. Kaye confirmed that the site is Regional Commercial. Kaye added that the larger the Eastlawn Plaza development gets the more restricting the zoning ordinance would be for signs.

Higgins suggested that the public hearing be closed to allow the Board to consider his suggestion of reducing the variance amount. Chairman Steele closed the public hearing.

Discussion:

Higgins explained that it makes sense to him to have a calculation based off of square feet per linear footage of unit frontage. He proposed that a variance be given for 1.5 square feet per linear foot of frontage for the “Phase 2” of the site, as indicated on the drawings submitted by the applicant, and that “Phase 1” be allowed signage of 1 square feet per linear foot of frontage on a per unit basis.

Green explained his concern that precedence has been established by the Planning Commission through the creation of this signage standard and if this board starts by granting this variance, a new precedence might be established.

Kaye explained that the responsibility of the Planning Commission is to review zoning ordinance regulations and recommend changes to City Council when needed. He cautioned that the responsibility of the ZBA is to hear applications as presented and not try to find a compromise.

Chairman Steele opened the public hearing back up to hear the comments of the applicant. Steele wondered about whether the applicant would be able to work with the proposed changes made by Higgins or if the current situation could be continued until a zoning ordinance change could be considered.

Damman explained that he is here to find a solution and that he does not think that the current situation of temporary banners is an adequate solution. It seems that in order to find a solution he will request to amend his proposal. Kaye explained that the proposal has been advertised one way and that changing the proposal would not be what was advertised. He explained that the Board properly should consider only the proposal

that was submitted, advertised and is before them now.

The Board continued by presenting the findings of fact.

Findings of Fact:

1. The property is zoned RC Regional Commercial.
2. The property contains four buildings.
3. The frontage is on four streets but two of the frontages are quite small and in the rear of the site.
4. The "Phase 1" building, as labeled on the plans, has 318 ft of linear feet of frontage.
5. The "Phase 2" building has 322 linear feet of frontage.
6. The Speed limit on Saginaw is 35 mph, 25 on Eastlawn and 25 on Washington.
7. "Phase 2" was built in the 1980's.
8. A number of buildings on site are corner properties.
9. Saginaw Road contains five lanes in front of the subject parcel.

Motion: It was moved by Higgins and seconded by Siemer to approve Petition No. 13-13 based on the findings of fact for an area/dimension variance at 825 South Saginaw Road to permit 2.5 square feet of wall signage for every lineal foot of tenant lease building frontage in the two mixed-use buildings, Phases 1 & 2, located on the site.

Higgins proposed to amend his motion to reduce the amount of requested signage.

Higgins moved to amend the original motion to permit Phase 1 with 1 square foot per linear foot of tenant lease building frontage and Phase 2 with 1.5 square foot per linear foot of tenant lease building frontage. The motion was supported by Siemer.

Deliberation: Siemer has always had a problem with the grandfather approach with a calculation of total signage. He believes that the approach proposed this evening adds greater equity to those existing units within the city.

Lichtenwald expressed his opposition to the motion as he believes a new precedent would be set that would not be beneficial to the city as a whole. He believes the solution to this request is to have the Zoning Ordinance amended starting with the Planning Commission and not by granting a variance.

Green explained that the board is here to follow the structure that is in place, not to legislate. He takes issue with trying to find a compromise with the applicant. It is his opinion that variances should be considered based on the details of the proposal and not amended on the fly while trying to obtain a compromise with the applicant.

Siemer explained his support to Higgins' proposal as he agrees that the requested amount is too large of a variance but the amended levels are more appropriate to this development.

Chairman Steele called for a roll call vote on the proposed amendment as moved by Higgins and supported by Siemer.

Vote:

Green: No

Higgins: Yes

Lichtenwald: No

Siemer: Yes

Steele: No

The motion was denied by a vote of 3-2.

It was moved by Higgins and seconded by Siemer to amend the original motion to permit 1 square foot of wall signage per tenant lease building frontage for both Phase 1 and 2 buildings.

Chairman Steele called for a roll call vote on the proposed amendment.

Vote:

Green: No

Higgins: Yes

Lichtenwald: No

Siemer: Yes

Steele: Yes

The motion was approved by a vote of 3-2.

Chairman Steele then called for a vote on the original motion as now amended.

It was moved by Higgins and supported by Siemer to approve Petition No. 13-13 based on the findings of fact for an area/dimension variance at 825 South Saginaw Road, as amended to permit 1 square foot of wall signage for every lineal foot of tenant lease building frontage in the two mixed-use buildings, Phases 1 and 2, located on the site.

Vote:

Green: No

Higgins: Yes

Lichtenwald: No

Siemer: Yes

Steele: Yes

The motion was approved by a vote of 3-2.

4. OLD BUSINESS

None

5. PUBLIC COMMENTS (not related to items on the agenda)

None

6. NEW BUSINESS

None

7. DECISION SHEET SIGNATURES

a. 13-07 Recorded

b. 13-12 Review Findings of Fact

8. ADJOURNMENT

Hearing no further business, the Chairman adjourned the meeting at 8:14 p.m.

Respectfully submitted,

C Bradley Kaye, AICP, CFM

Director of Planning and Community Development